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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,382	03/26/2004	Kun-Chen Chen	CHEN3648/EM	7612

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EXAMINER

JOHNSON, JERROLD D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/809,382

Applicant(s)

CHEN, KUN-CHEN

Examiner

Jerrold Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1,6 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang US Patent Application Publication 2004/0200749.

Re claim 1, Wang discloses in Fig. 8 a tool bracket for storing tool bits defined as both “prior art” in the drawings, and as a “conventional tool box” in the specification. The tool bracket is disposed within a tool box. The tool bracket itself comprises a base having an open top, a bottom, two opposite sides, a back and an open front to define a cavity inside the base and having at least one positioning device formed on the back of the base; and a rack pivotally mounted inside the cavity in the base having a top, a bottom, a front face, a rear face, two sidewalls and multiple compartments formed in the

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rack, wherein the rack has at least one opening defined in the rear of the base to allow the positioning device passing through.

Re claim 6, the pairs of positioning devices comprise U-holders.

Re claim 7, the rack is a rectangular case, and the multiple compartments are defined in the rack.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Terry, Jr. US 3,000,049.

Wang does not disclose the structure through which the rack pivots with respect to the base. In Fig. 2, Wang does disclose the common arrangement where a rack does pivot about a base through a cylindrical pivot pin.

Terry, Jr. discloses the common hinge arrangement where a pivot pin includes nubs and the corresponding pivot hole includes indents.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pivoting bracket of Wang Fig. 8 with a pivot pin arrangement as also disclosed by Wang in Fig. 2 and to have further included nubs and detents as disclosed by Terry, Jr., so as to impart a slight resistance against pivotal movement and thereby minimize the possibility that the rack would pivot about the base when not desired to do so, (which is the problem identified by Wang in is disclosure of Fig. 8).

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wang.

Wang discloses multiple openings as opposed to one elongated opening.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pivoting bracket of Wang Fig. 8 with a single opening as opposed to multiple openings, as the openings only serve the purpose of allowing the passage of the positioning devices, and the vertical dividers separating each opening do not perform any function and could be eliminated to save material in manufacturing.

4. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Chen US 6,847,074.

Wang does not disclose hexagonal holes. Wang, however, does disclose a guard strip formed on the front face below the open slot, and recesses are disposed behind the guard strip which align with the round holes 75.

Chen discloses the common arrangement where tool receiving holes are hexagonal to accommodate hexagonal tools.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pivoting bracket of Wang Fig. 8 with hexagonal holes as taught by Chen so that the hexagonal tools are more securely retained within the holes.

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Yu US 6,615,983.

Wang does not disclose tabs.

Yu discloses a single tab (unidentified) on a rack which pivots about a base.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pivoting bracket of Wang Fig. 8 with a tab or more than one tab to the tool bracket to assist the user in pivoting the rack with respect to the base. Although Yu only discloses a single tab, it has been held that multiplying elements does not convey patentable significance in most situations, and in the present situation it would be well within the purview of a skilled artisan to include more than one tab if desired to increase the user friendliness of the product.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Streich et al. US 6,405,864 discloses a hexagonal hole spaced apart from and above a similarly shaped guard strip which defines a recess aligned with the hexagonal hole.

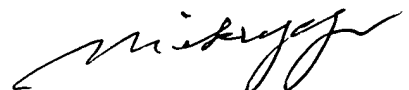
Shauo US 5,931,318 discloses a tab 24.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jdj



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